LAM SAI CHOON & ANOR.

v.

PEMUNGUT HASIL TANAH, KINTA

HIGH COURT MALAYA, IPOH
AJAIB SINGH J
[ORIGINATING MOTION NO. 42 OF 1983]
13 JANUARY 1984

ADMINISTRATIVE LAW: *Certiorari - Application to quash award by Collector of Land Revenue - 6 years delay in paying compensation - Whether rendered acquisition proceedings null and void - Application for leave for order of certiorari - Whether out of time - Land Acquisition Act 1960, ss. 8, 68 - Rules of the High Court 1980, O. 53 r. 1A.*

CONSTITUTIONAL LAW: *Article 13 - Whether contravened - Land acquisition - Whether in accordance with law.*

On 29 August 1974, the State Authority published a declaration pursuant to s. 8 of the Land Acquisition Act 1960 stating its intention to acquire the land. The Collector held an enquiry on 13 February 1976 and on 22 May 1976 he made a written award which was served on the applicants on 12 July 1976. The applicants were told to collect the compensation by a letter dated 28 March 1983. The applicants filed this action on 6 May 1983.

Held:

[1] The applicants were out of time in applying for leave for an order of *certiorari*. Order 53 r. 1A of the Rule of the High Court 1980 provides that the application for leave must be made within 6 weeks from the date of the proceedings. The period must be calculated from 22 May 1976.

[2] The delay in paying compensation did not render the acquisition proceedings null and void.

[3] Article 13 of the Federal Constitution was not contravened as the land was acquired in accordance with law.

[Application dismissed.]

Cases referred to:

Mersing Omnibus Co Sdn Bhd v The Minister of Labour and Manpower [1983] CLJ (Rep) 266
Pemungut Hasil Tanah v. Ong Gaik Kee [1983] 2 MLJ 35
Bhanwerlal v. State [1952] AIR Ajmer 30

Legislation referred to:

Federal Constitution, art. 13
Land Acquisition Act 1960, ss. 8, 68
Rules of the High Court 1980, O. 53 r. 1A

For Applicants - Sivalingam; M/s. Kean Chye & Sivalingam

JUDGMENT

Ajaib Singh J:

On 6 May 1983 the trustees of the estate of Lam Looking (deceased) filed an application for leave to apply for an order of *certiorari* to remove into the High Court for the purpose of quashing an award of compensation made by the Collector of Land Revenue on 22 May 1976 for the acquisition of land belonging to the estate. I dismissed the application on 29 August 1983. Subsequently at the request of Counsel for the applicants I agreed to hear further arguments and on 9 September 1983 Mr. Sivalingam for the applicants put in an amended application whereby the reference to the award dated 22 May 1976 was deleted and in place thereof the number of the acquisition proceedings was substituted.

The brief facts of this case are as follows. On 29 August 1974 the State Authority published a declaration pursuant of s. 8 of the Land Acquisition Act 1960 stating its intention to acquire the land. An inquiry was duly held by the Collector on 13 February 1976 and on 22 May 1976 he made a written award which was served on the applicants on 12 July 1976. The applicants accepted the award "without prejudice to appeal and under protest" and on the same day they filed a written objection against the award requiring the Collector to refer the matter to the High Court.

Thereafter the applicants went to the office of the Collector on various occasions to inquire about the payment of the compensation awarded. The Collector had not received any money from the Majlis Perbandaran Ipoh for whom the land had in fact been acquired and he was therefore not in a position to make payment to the applicants. On about 30 March 1983 the applicants were notified by the Collector by letter dated 28 March 1983 requiring the applicants to go to his office to collect the amount of the compensation which he had awarded on 22 May 1976.

The applicants alleged that the Collector had acted contrary to law and in excess of jurisdiction by not complying with the provisions of the Land Acquisition Act in that he failed to make payment of the compensation as soon as may be after the making of the award. It was alleged that the period of 6 years and 8 months from the date of the award to the offer of payment was inordinate and amounted to an abuse of the discretion of the Collector who acted in excess of jurisdiction vested in him by law. The applicants contended that by reason of the delay the award must be deemed to have lapsed and that by basing the market value of the land as at 29 August 1974 the applicants had been deprived of the fundamental liberty of right to property as guaranteed by Article 13 of the Federal Constitution.

The award of the Collector is a final determination in land acquisition proceedings for it is provided in s. 68 of the Land Acquisition Act that no suit shall be brought to set aside a Collector's award. Reference to the High Court is limited to the determination of the measurement of the land, the amount of compensation, the person to whom it is payable and the apportionment of the compensation. The High Court cannot set aside the Collector's award on a reference.

Notwithstanding s. 68 of the Land Acquisition Act the High Court has the power to quash the Collector's award by way of *certiorari* if it can be shown that the Collector or the State Authority acted without or in excess of jurisdiction or that there was an error of law or fact which affected the jurisdiction or that the rules of natural justice were not followed.

I dismissed the application on two grounds. First I was of the view that in applying for leave the applicants had to show a *prima facie* case. Leave for the issue for an order of *certiorari* cannot be granted just for the asking. The application had to show *prima facie* at least that the Collector of Land Revenue had exceeded his powers or had contravened the rules of natural justice or had not acted *bona fide* when he made his award. The applicants had to produce sufficient evidence for a *prima facie* case and this they had failed to do. The Collector had in no way acted without or in excess of jurisdiction nor had he infringed the rules of natural justice. All the provisions in the Land Acquisition Act culminating in his written award on 22 May 1976 were complied with. The parties were represented by counsel and they were duly heard in the proceedings before the Collector. There was no error of law or fact and no such error affecting the jurisdiction of the Collector. Article 13 of the Federal Constitution was not contravened in any way because the land was acquired in accordance with the law as prescribed under the Land Acquisition Act 1960 which provides also for adequate compensation.

Secondly the applicants were very much out of time in applying for leave. Order 53 r. 1A states *inter alia* that leave shall not be granted to apply for an order of *certiorari* to remove any proceeding for the purpose of its being quashed unless the application for leave is made within six weeks after the date of the proceeding or the delay is accounted for to the satisfaction of the Court. The written award was made by the Collector on 22 May 1976 and the six weeks had to be calculated from that date and not from the date when the Collector wrote to the applicants to collect their money. The applicants were quite aware of their rights for they had very promptly filed objection proceedings on 12 July 1976. But they made no effort whatsoever to bring *certiorari* proceedings in the High Court in time nor have they now accounted for the delay. On this ground alone the applicants must fail.

Eusoffe Abdoolcader FJ had this to say on this point in the case of *Mersing Omnibus Co. Sdn. Bhd. v. The Minister of Labour and Manpower* [1983] CLJ (Rep) 266:-

> At the outset of the hearing of this appeal we raised the question of the appellant being out of time in his application for leave for *certiorari* in the light of the provisions of O. 53 r. 1A of the Rules of the High Court, 1980 the relevant part of which specifically provides that leave shall not be granted to apply for an order of *certiorari* unless the application for leave is made within six weeks after the date of the proceeding or the delay is accounted for to the satisfaction of the Court or Judge to whom the application for leave is made... Apparently this point completely escaped all parties involved, as a result perhaps of an affliction of incorrigible somnolence that seems to pervade the perception of the law and practice of the profession from time to time. We took the point ourselves as it clearly goes to the jurisdiction of the Court from which leave to apply for *certiorari* was sought as O. 53 r. 1(1) stipulates that no application for an order of *certiorari* shall be made unless leave therefor has been granted and r. 1A which we have already adverted to enacts that leave shall not be granted except in accordance with its specific provisions.

The applicants sought to strengthen their case by amending the application but to no avail. They are seeking to quash acquisition proceedings No. 1/76 and these are the very proceedings which culminated in the award of the Collector on 22 May 1976 so that any application for leave to apply for *certiorari* had to be made within six weeks from that date. The amendment rather confuses the whole case. "In an application for *certiorari*" said Eusoffe Abdoolcader FJ in the case cited above "it is essential to specify the particular order or decision made and sought to be quashed".

In support of his submission Mr. Sivalingam referred to the case of *Pemungut Hasil Tanah v. Ong Gaik Kee* [1983] 2 MLJ 35 and the case of *Pemungut Hasil Tanah v. Kam Gin Paik & 9 Ors.* Federal Court Civil Appeal No. 115/83. These two cases however centered mainly around the rules of natural justice and the delay in making the award from the date of publication of the *gazette* notification. In these two cases the delay in applying to the Court for leave to apply for an order of *certiorari* was not in issue and was not discussed or considered by the Federal Court.

In the present case before me the delay was over the payment of the award and I held that in the circumstances of the case the delay did not render the acquisition proceedings null and void. The Collector did not have funds from which to pay to the applicants and this had occasioned the delay but the delay cannot be a ground for declaring the award null and void. After all until formal possession of the land is taken by the Collector under s. 22 of the Land Acquisition Act the land remains in the possession of the applicants who enjoy the rents and profits which may accrue from it.

On the question of delay I found support in the case of *Banwerlal v. State* [1952] AIR Ajmer 30. In that case acquisition proceedings "dragged on before the Collector for over six years, and after the award had been given the amount of compensation awarded was not deposited for years for the payment to the petitioners". It was held that the delay in the disposal of the case or the delay in depositing the compensation award was no ground at all to hold that the proceedings were without any jurisdiction. The petition to quash the acquisition proceedings was accordingly dismissed.

For reasons which I have stated the application is dismissed.

Also found at [1984] 1 CLJ 257